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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 381 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

RAJNIKANT OCHHAVLAL SHAH

Versus

DARJI SAMASTA PANCH

Appearance:

MR AJ PATEL WITH MR YM THAKKAR for Petitioner

MR JAL SOLI UNWALA FOR RESPONDENT - CAVEATOR

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 26/04/2000

ORAL JUDGEMENT

1. The petitioner has filed the present Civil Revision Application u/s 115 of the Code of Civil Procedure, 1908, challenging the judgement and order recorded by the learned Joint District Judge, Panchmahals, at Godhra on 1st April 2000 in Regular Civil Appeal No.84/1999 under which the learned Judge dismissed

the said appeal and confirmed the order passed by the learned Civil Judge [J.D.] - Dahod on 18/9/1999, acting as Executing Court in Regular Execution Petition No.33/1997, under which the learned Judge directed that the possession warrant be issued in favour of the respondents and against the petitioner.

2. It appears from the records and arguments advanced by the learned advocates for the parties that the respondents instituted Regular Civil Suit No.118/93 before the learned Civil Judge [J.D.] - at Dahod against the petitioner on the ground that the petitioner had raised permanent structure in the rented premises without the express consent of the respondents, and therefore, is liable to be evicted from the said premises.

3. The petitioner was duly served and yet he did not file and written statement in the said civil suit. The said suit was filed in July 1993 and thereafter, the parties submitted an application for obtaining consent decree on 26/8/1993. The said consent terms show that the present petitioner admitted the suit of the respondents fully and the consent terms further show that the possession of the premises was to be handed over by the petitioner to the respondents latest by 1/10/1997 and if the petitioner should fail in handing over the possession thereof, then the respondents would be at liberty to take possession of the said property by getting the decree executed.

4. On the strength of the said consent decree, the respondents preferred the aforesaid Regular Execution Petition No.33/97. Notice was issued to the petitioner and after hearing the parties, the learned Judge passed the aforesaid order, allowing the execution petition and directing that the possession warrant be issued in favour of the respondents and against the petitioner.

5. Feeling aggrieved by the said judgement and order of the Executing Court, the petitioner preferred Regular Civil Appeal No.84/1999 which came to be dismissed by the learned Joint District Judge, by judgement and order dated 1/4/2000.

6. Feeling aggrieved by the said judgement and order of the learned Joint District Judge, Panchmahals, at Godhra, the petitioner has preferred the present Civil Revision Application.

7. It has been mainly contended that the Civil Court which has passed the decree had no jurisdiction to pass

the decree, inasmuch as there was no ground envisaged in section 13[1], and therefore, the decree is nullity though it is a consent decree.

8. I have heard the learned counsel for the parties and have also perused the papers.

9. Now so far as the provisions made in section 13[1] is concerned, it is very clear that the Court has to satisfy about the existence of the grounds mentioned in section 13[1] before passing a decree, which may be a decree of eviction. It may be a decree on merits or it may be a decree on consent submitted by the parties.

10. Section 13[1][b] of the Bombay Rents, Hotels and Lodging House, Rates Control Act, 1947 [hereinafter referred to as 'the Rent Act' for short] makes it clear that the landlord will be entitled to a decree of possession of a tenanted property provided it is proved to the satisfaction of the court that the tenant has without landlord's consent given in writing, erected on the premises any permanent structure.

11. Then we also consider the explanation to the said provision which says that, no permanent structure shall deemed to be erected on any premises merely by reason of the construction of a partition wall, door or lattice work or the filling of kitchen-stand or such other alterations made in the premises as can be removed without serious damage to the premises.

12. The aforesaid provision of law cannot be put to dispute for any purpose.

13. Here, the learned counsel for the petitioner has vehemently contended during the course of his argument that in the aforesaid suit being Regular Civil Suit No.118/93, it was never stated or alleged as her the explanatory part of section 13[1] of the said Rent Act. In other words, the argument is that the respondents have not alleged that the permanent structure was of a nature which could not be removed without serious damage to the premises and therefore, the court could not have passed the decree in absence of any proof so as to cover the explanation read with section 13[1][b] of the Rent Act.

14. Now, it is true that the plaint does not state in so many words that the construction was in accordance with the explanation set out in section 13[1] of the Rent Act. However, it is well known principle that the pleadings of the courts are not required to be strictly

construed. More over, when there is a mention that the tenant has constructed a structure of a permanent nature without the expressed consent of the landlord, then in my opinion, it cannot be said that the respondent has not brought the case within the four corners of section 13[1][b] of the Rent Act. Whether the said construction is proved to be covered by the said explanation or not, would be a matter of evidence.

15. In that premises, it cannot be said that the pleading was inadequate and therefore, no decree could be passed on the strength of the said pleadings by the trial court.

16. More over, in the present case, the petitioner did not file written statement and did not object grant of the decree though he was specifically served with summons. It is well settled that the summons are being issued under Order 8 Rule 1 and it gives an opportunity to the defendants to file the written statement. If we read order 8 rule 1, rule 5 and 10 together, it will be very clear that if the written statement is not filed, the court has jurisdiction and power to pass decree after pronouncing judgement on the basis of the averments made in the plaint.

17. So far as the Rent Courts are concerned, there is some restriction because the provision made in section 13[1] itself makes it clear that the court has to satisfy about the grounds existing under said section.

18. However, absence of written statement would be one of the grounds for entertaining jurisdiction by the Court. The present petitioner appeared before the rent court and admitted the suit in full. Therefore, the admission of plaint and contents of the plaints would be additional ground provided to the rent court for exercising jurisdiction for passing the decree for possession in respect of the tenanted property in favour of the respondents and against the petitioner.

19. Therefore, considering the two aspects together, firstly there was absence of written statement and secondly, there was consent by the petitioner and admission to the facts stated in the plaint, this would be a ground provided to the rent court for passing the decree for eviction in terms of consent decree.

20. Therefore, though the plaint does not state in so many words that the structure raised by the present petitioner stood covered by section 13 of the Rent Act,

it may be said that the allegations stating that there was permanent structure and when the permanent structure was specifically mentioned by the respondents as one of the grounds or the only ground for getting the decree for possession, it can be gathered that there was sufficient material on record to show that there was allegation about the permanent structure without express consent of the landlord and the petitioner consented to the said allegation by admitting the suit in full.

21. Therefore, when the contents of the plaint have been admitted by the petitioner, it cannot be said that there was no ground for the satisfaction of the rent court for passing decree for possession.

22. It therefore cannot be said that the decree passed by the rent court was without application of mind or that it was without jurisdiction or that there was no ground as enumerated in section 13[1][b] read with explanation section 13. It therefore cannot be said that the decree was nullity.

23. Therefore, the rent court as executing court or the district court cannot be said to have committed any error of law relating to jurisdiction in rejecting the said contention raised on behalf of the petitioner before the executing court as well as before the district court.

24. Learned counsel for the petitioner has relied upon a decision of AIR 1973 SC 1311 in the case of K.K.Chari v/s R.M. Sheshadri in order to support his argument that the court must satisfy itself that the statutory ground exists. As discussed above, the court did not have the written statement before it, then the court had allegations about section 13[1] [b] of the Rent Act and at a latter stage, the petitioner appeared before the court and admitted the facts stated in the plaint. This provided material to the court concerned. Therefore, it cannot be said that the court passed a decree without application of mind to the facts of the case.

25. Another decision referred to is from our own High Court reported in 1971 GLR 1012. There also, it has been observed that if the trial court had inherent jurisdiction over the subject matter itself to entertain such a compromise as the matter was one on which the civil court jurisdiction was wholly excluded or because it was the court of limited jurisdiction or it has no jurisdiction on the subject matter on which it sought to pass consent decree, then appropriate orders can be

passed. There is no difficulty in dealing with such subjects. If the suit was entertained by the rent court constituted under the rent act, the petitioner did not file written statement and fully agreed with the averments made in the plaint, then therefore, it cannot be said that there was total lack of jurisdiction on part of the rent court.

26. In case of Bai Saraswati Gandadal v/s Vajesing Anopsing and others reported in 1984 GLH [UJ] 11, it was a matter under section 13[1][b] read with section 13[1][2] of the Rent Act. There the time was granted to the tenant to vacate the premises and therefore, it was held that this amounted to application of mind to the provisions contained in section 13[2]. Learned counsel for the respondents has argued that, in the present case also, time has been granted to the tenant for vacating the premises. I do not find that there is any analogy because there was an obligation on part of the court to consider the comparative hardship u/s 13[1][2]. There was no obligation on part of the court below to consider the question of hardships u/s 13[2] because the suit did not arise on the ground of section 13[1][g]. Therefore, in my opinion, the said decision will not apply to the facts of the case.

27. Anyway, from the aforesaid discussion, it can be said that the court had applied its mind and it had jurisdiction to pass the decree and it was not necessary that there should be specific pleadings so as to cover the explanation rendered to section 13 of the Rent Act.

28. In that view of the matter, the decree cannot be treated to be illegal and inexecutable as without jurisdiction. Both the courts have recorded their findings on the aforesaid aspects and there is no reason to differ from the findings recorded by the two courts below. Consequently, there is no merit in the present revision application and the same deserves to be dismissed.

29. The present Civil Revision Application is accordingly dismissed and the impugned judgements and orders of the two courts below are hereby confirmed. No order as to costs.

30. At this stage, learned counsel for the petitioner prays for time to go to the superior court in SLP and he seeks three months time. Learned counsel for the respondents strongly objects to the aforesaid submission.

31. Since the matter relates to the possession of an immovable property, the petitioner is granted time for three months from today for vacating the premises and for obtaining the appropriate orders from the appropriate court on condition that the petitioner shall submit an undertaking within 15 days before the trial court that, in case he fails to obtain any order from the superior court or if he does not approach the superior court within three months, then he shall voluntarily handover the vacant possession of the premises to the respondent on expiry of three months period from today and he shall also further give an undertaking to the court below that there is an understanding that if the aforesaid undertaking is not implemented in time, then it would amount to Contempt of Court.

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